

Title 32: PROFESSIONS AND OCCUPATIONS

Chapter 5-B: AUCTIONEERS

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Maine Revised Statutes
Title 32: PROFESSIONS AND OCCUPATIONS
Chapter 5-B: AUCTIONEERS

Subchapter 1: GENERAL PROVISIONS

§284. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1999, c. 146, §5 (NEW).]

1. Auction. "Auction" means the offering of goods or real estate for sale by means of exchanges between an auctioneer and bidders.

[1999, c. 146, §5 (NEW) .]

2. Auctioneer. "Auctioneer" means any person who conducts, advertises or offers that person's service to conduct auctions; contracts or offers to contract with consignors of real or personal property, with or without receiving or collecting a fee, commission or other valuable consideration; or sells or offers to sell property at auction.

[1999, c. 146, §5 (NEW) .]

3. Bid. "Bid" means an offer to buy.

[1999, c. 146, §5 (NEW) .]

4. Board. "Board" means the Board of Licensing of Auctioneers, as established by Title 5, section 12004-A, subsection 5.

[1999, c. 146, §5 (NEW) .]

5. Buyer's premium. "Buyer's premium" means a premium usually described as a percentage of the final bid to be paid by the buyer as part of the purchase price.

[1999, c. 146, §5 (NEW) .]

6. Consignor. "Consignor" means the bona fide owner, agent or party in interest of the personal property or real estate being offered for sale.

[1999, c. 146, §5 (NEW) .]

7. Completion of sale. "Completion of the sale" means the acceptance of the final bid by the auctioneer as indicated by the fall of the hammer or in another customary manner.

[1999, c. 146, §5 (NEW) .]

8. Person. "Person" means an individual.

[1999, c. 146, §5 (NEW) .]

9. Reasonable period of time. "Reasonable period of time" means not more than 30 days from the date of the auction or such other time as is stated in a contract.

[1999, c. 146, §5 (NEW) .]

10. With reserve. "With reserve" means that the consignor reserves the right to establish a minimum bid, to accept or reject any bid and to withdraw the property at any time prior to the announcement of the completion of the sale by the auctioneer.

[1999, c. 146, §5 (NEW) .]

11. Without reserve. "Without reserve" means that no minimum opening bid or other condition that limits the sale other than to the highest bidder is required and that the consignor may not modify or nullify the sale by bidding either personally or through a representative. An auction without reserve is the same as an absolute auction.

[1999, c. 146, §5 (NEW) .]

SECTION HISTORY

1999, c. 146, §5 (NEW).

§285. LICENSE REQUIRED

A person in this State who engages in the business of auctioneering, professes or advertises to be an auctioneer or advertises the sale of real, personal or mixed property by auction shall hold a valid auctioneer's license. [1999, c. 146, §5 (NEW).]

SECTION HISTORY

1999, c. 146, §5 (NEW).

§286. EXEMPTIONS TO LICENSING

1. Personal use. A person does not require a license in order to auction personal or real property that the person has maintained for that person's use or personal property that the person's parents, spouse or children have maintained for their own use.

[1999, c. 146, §5 (NEW) .]

2. Charitable, educational, religious or nonprofit organizations. This chapter does not apply to individuals who conduct a sale or auction for a charitable, educational, religious or other nonprofit organization as long as the nonprofit organization retains the total amount of the proceeds, with the exception of advertising fees, and the person conducting the sale or auction receives no fee for services.

[1999, c. 146, §5 (NEW) .]

3. Sheriffs, tax collectors, executors and administrators. This chapter does not apply to sheriffs or their deputies, constables, tax collectors, executors, administrators or any other officers authorized to sell property by order of any court.

[1999, c. 146, §5 (NEW) .]

4. Pedigreed animals. This chapter does not prohibit any person employed by the owner of pedigreed animals from selling those animals at public auction.

[1999, c. 146, §5 (NEW) .]

5. Mortgage foreclosure sales. This chapter does not apply to any individual conducting a mortgage foreclosure sale.

[2015, c. 147, §6 (AMD) .]

6. Tax-acquired property. This chapter does not apply to the sale by or on behalf of a municipality of any real or personal property acquired by that municipality for nonpayment of taxes.

[1999, c. 146, §5 (NEW) .]

7. Assistants. This chapter does not apply to a person assisting the auctioneer in conducting the auction sale if the auctioneer is physically present and assumes full responsibility for the auction sale. The assistant may not be a person who has had an auctioneer license denied, suspended or revoked in this State or in any other state.

[2011, c. 286, Pt. C, §1 (AMD) .]

8. Contracted Internet services. This chapter does not apply to an individual who takes possession of goods pursuant to a contract for the exclusive purpose of selling those goods over the Internet, unless otherwise licensed under this chapter.

[2007, c. 61, §1 (AMD) .]

SECTION HISTORY

1999, c. 146, §5 (NEW). 2005, c. 349, §1 (AMD). 2007, c. 61, §1 (AMD). 2011, c. 286, Pt. C, §1 (AMD). 2015, c. 147, §6 (AMD).

§287. PENALTIES

Any person who violates section 285 is subject to the provisions of Title 10, section 8003-C. [2007, c. 402, Pt. G, §1 (AMD).]

SECTION HISTORY

1999, c. 146, §5 (NEW). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 402, Pt. G, §1 (AMD).

§287-A. FEES

The Director of the Office of Professional and Occupational Regulation within the Department of Professional and Financial Regulation may establish by rule fees for purposes authorized under this chapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for any one purpose may not exceed \$200 annually. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A. [2001, c. 323, §15 (NEW); 2011, c. 286, Pt. B, §5 (REV).]

SECTION HISTORY

2001, c. 323, §15 (NEW). 2011, c. 286, Pt. B, §5 (REV).

Subchapter 2: BOARD

§288. BOARD OF LICENSING OF AUCTIONEERS; ORGANIZATION

1. Board composition. The Board of Licensing of Auctioneers, as established by Title 5, section 12004-A, subsection 5, is composed of 5 members, 3 of whom must be auctioneers and 2 of whom must be public members as defined in Title 5, section 12004-A.

[2007, c. 402, Pt. G, §2 (AMD) .]

2. Terms; removal. The terms of the members of the board are for 3 years. Members may be removed by the Governor for cause.

[1999, c. 146, §5 (NEW) .]

3. Appointments. The members of the board are appointed by the Governor. Appointments of members must comply with Title 10, section 8009.

[2007, c. 402, Pt. G, §2 (AMD) .]

4. Meetings. The board shall meet at least once a year and at such other times as the board determines necessary.

[2013, c. 246, Pt. B, §4 (AMD) .]

SECTION HISTORY

1999, c. 146, §5 (NEW). 2007, c. 402, Pt. G, §2 (AMD). 2013, c. 246, Pt. B, §4 (AMD).

§289. RULES

The board may establish guidelines and rules by which this chapter is administered. Rules adopted pursuant to this chapter are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A. Rules adopted by the board must be consistent with Title 5, chapter 375, subchapter II. [1999, c. 146, §5 (NEW) .]

1. Adjudicatory hearings.

[2007, c. 402, Pt. G, §3 (RP) .]

2. Investigations.

[2007, c. 402, Pt. G, §4 (RP) .]

3. Standards of practice. The board may adopt rules governing the practice of auctioneering that establish standards of practice that serve to protect the public interest.

[1999, c. 146, §5 (NEW) .]

4. License qualifications. The board may adopt rules relating to the qualifications of an applicant for any license authorized under this chapter that ensure that an applicant is sufficiently trustworthy and competent to practice auctioneering.

[1999, c. 146, §5 (NEW) .]

5. Fees.

[2001, c. 323, §16 (RP) .]

6. Other. The board may adopt any other rules that are necessary for the performance of its duties under this chapter.

[1999, c. 146, §5 (NEW) .]

SECTION HISTORY

1999, c. 146, §5 (NEW). 1999, c. 687, §F3 (AMD). 2001, c. 323, §16 (AMD). 2007, c. 402, Pt. G, §§3, 4 (AMD).

§290. POWERS

The board shall administer and enforce this chapter and evaluate the qualifications of applicants for licensure. [2007, c. 402, Pt. G, §5 (RPR).]

SECTION HISTORY

1999, c. 146, §5 (NEW). 1999, c. 687, §F4 (AMD). 2007, c. 402, Pt. G, §5 (RPR).

§291. GROUNDS FOR DISCIPLINARY ACTION

(REPEALED)

SECTION HISTORY

1999, c. 146, §5 (NEW). 2003, c. 582, §3 (AMD). 2007, c. 402, Pt. G, §6 (RP).

§291-A. DENIAL OR REFUSAL TO RENEW LICENSE; DISCIPLINARY ACTION

In addition to the grounds enumerated in Title 10, section 8003, subsection 5-A, paragraph A, the board may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A for any of the following reasons: [2007, c. 402, Pt. G, §7 (NEW) .]

1. Failure to account or remit. Failure, within a reasonable time, to account for or remit any money or property coming into the licensee's possession that belongs to others;

[2007, c. 402, Pt. G, §7 (NEW) .]

2. Record-keeping violations. Failure to comply with or properly maintain records required by Title 30-A, section 3971;

[2011, c. 286, Pt. C, §2 (AMD) .]

3. Improper advertising. Advertising an auction without including the name and license number of the auctioneer; or

[2011, c. 286, Pt. C, §3 (AMD) .]

4. Unqualified assistants. Allowing a person to act as an assistant who has had an auctioneer license denied, suspended or revoked in this State or in any other state.

[2011, c. 286, Pt. C, §4 (NEW) .]

SECTION HISTORY

2007, c. 402, Pt. G, §7 (NEW). 2011, c. 286, Pt. C, §§2-4 (AMD).

Subchapter 3: LICENSING QUALIFICATIONS

§292. LICENSE QUALIFICATIONS

1. Application. An applicant shall submit an application together with the fee as set under section 287-A.

[2007, c. 402, Pt. G, §8 (AMD) .]

2. Residence. The applicant shall provide evidence of the applicant's legal residence.

[1999, c. 146, §5 (NEW) .]

3. Reputation. The applicant must have a good reputation for honesty, fair dealing and competency.

[2013, c. 217, Pt. J, §1 (AMD) .]

4. Examination. Each applicant shall satisfactorily pass the examination, the content of which is determined by the board. Examination results remain valid for issuance of a license for 90 days after the exam is passed.

[2007, c. 402, Pt. G, §8 (AMD) .]

5. Surety bond. Each applicant for licensure shall file a surety bond in an amount set by the board by rule.

[1999, c. 146, §5 (NEW) .]

6. Criminal history information.

[2007, c. 402, Pt. G, §8 (RP) .]

SECTION HISTORY

1999, c. 146, §5 (NEW). 2007, c. 402, Pt. G, §8 (AMD). 2013, c. 217, Pt. J, §1 (AMD).

§293. LICENSE LIMITED TO INDIVIDUALS

Licensure is determined based on individual and personal qualifications. A firm, company, partnership or corporation may not be licensed under this chapter. [1999, c. 146, §5 (NEW) .]

SECTION HISTORY

1999, c. 146, §5 (NEW).

§294. NONRESIDENT LICENSURE

1. Nonresident license. Every nonresident person desiring to do business as an auctioneer in this State shall obtain a license. The board may issue a license to any nonresident upon fulfillment of the same application requirements as those set forth for resident auctioneers. In addition, a nonresident applicant shall furnish the following:

A. A certificate of good standing from each jurisdiction where the applicant is licensed; and [1999, c. 146, §5 (NEW).]

B. [2013, c. 217, Pt. K, §1 (RP).]

[2013, c. 217, Pt. K, §1 (AMD) .]

SECTION HISTORY

1999, c. 146, §5 (NEW). 2011, c. 286, Pt. B, §5 (REV). 2013, c. 217, Pt. K, §1 (AMD).

§295. RENEWAL

Licenses expire annually on March 31st or at a time the Commissioner of Professional and Financial Regulation designates. The board may issue a renewal license in the absence of any reason or condition that might warrant the refusal of granting a license upon receipt of the written request of the applicant and the renewal fee as set under section 287-A and upon the applicant presenting evidence of compliance with the requirements of section 292, subsection 5. A license may be renewed up to 90 calendar days after the date of its expiration upon payment of a late fee in addition to the renewal fee. Any applicant who submits an application for renewal more than 90 calendar days after the expiration date is subject to all requirements governing new applicants under this chapter. [2007, c. 402, Pt. G, §9 (AMD).]

SECTION HISTORY

1999, c. 146, §5 (NEW). 2007, c. 402, Pt. G, §9 (AMD).

§296. INSPECTION OF LICENSE; OWNERSHIP

Every auctioneer shall show that auctioneer's license at any time upon the request of a municipal law enforcement agency or officer or a municipal clerk or official in whose municipality the auctioneer is conducting an auction. The provisions for obtaining a state auctioneer's license do not prohibit any municipality from establishing its own permit requirements for an auction sale, provided no municipal permit is required for an auction that lasts less than 2 full consecutive days. [1999, c. 146, §5 (NEW).]

A municipal law enforcement agency or officer or a municipal clerk or official may require the auctioneer to state whether the merchandise is owned by another party and the name and address of that party. [1999, c. 146, §5 (NEW).]

SECTION HISTORY

1999, c. 146, §5 (NEW).

§297. REAL ESTATE BROKERAGE

If an auctioneer engages in real estate brokerage, the auctioneer must be licensed under chapter 114, except that a real estate license is not required if the auctioneer is hired to call bids on real estate being sold at an auction and the auctioneer does not prepare contracts or otherwise control the actual sale or take custody of any part of the purchase price. [1999, c. 146, §5 (NEW).]

SECTION HISTORY

1999, c. 146, §5 (NEW).

§298. CONTRACT REQUIRED

1. Contract required. An auctioneer may not conduct an auction in this State without first having a written contract with the consignor of any property to be sold. The contract must contain the date of the contract and the name and license number of the auctioneer. The contract must contain the terms and conditions of the auction, including but not limited to:

- A. The description of all items to be sold; [1999, c. 146, §5 (NEW).]
- B. Whether the auction is with reserve or without reserve; [1999, c. 146, §5 (NEW).]
- C. The payment schedule; [1999, c. 146, §5 (NEW).]
- D. The commission rate; and [1999, c. 146, §5 (NEW).]
- E. The statement of other charges, including a buyer's premium. [1999, c. 146, §5 (NEW).]

[1999, c. 146, §5 (NEW) .]

SECTION HISTORY

1999, c. 146, §5 (NEW).

§299. CONDITIONS OF AUCTION SALES

Each auctioneer shall post for display and describe at the beginning of each auction the conditions of the auction sale. The conditions must indicate: [1999, c. 146, §5 (NEW).]

- 1. Sold "as is."** Whether the property is sold "as is";

[1999, c. 146, §5 (NEW) .]

2. Highest bidder acknowledged. Whether the highest bidder at the completion of the sale will be acknowledged by the auctioneer;

[1999, c. 146, §5 (NEW) .]

- 3. Reserve.** Whether the auction is with reserve or without reserve and the acceptable manner of bids;

[1999, c. 146, §5 (NEW) .]

- 4. Absentee bids.** Whether absentee bids are allowed;

[1999, c. 146, §5 (NEW) .]

- 5. Sales tax.** Sales tax requirements;

[1999, c. 146, §5 (NEW) .]

6. Auctioneer or consignor bidding. Whether or not the auctioneer or consignor reserves the right to bid;

[1999, c. 146, §5 (NEW) .]

- 7. Uniform Commercial Code.** A statement that Title 11, section 2-328 applies to this auction sale;

[1999, c. 146, §5 (NEW) .]

8. Statement of buyer's premium. A statement of the buyer's premium and any other charges to the bidders or any other persons in attendance; and

[1999, c. 146, §5 (NEW) .]

9. Title and address. The title and address of the board.

[1999, c. 146, §5 (NEW) .]

SECTION HISTORY

1999, c. 146, §5 (NEW) .

§299-A. WINE AUCTIONS

A person licensed under section 285 may not auction privately held wine without a permit issued by the Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations according to Title 28-A, section 1209. [2015, c. 366, §2 (NEW) .]

SECTION HISTORY

2015, c. 366, §2 (NEW) .

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